

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**BUILDING CONSTRUCTION
ENTERPRISES, INC.**

PLAINTIFF

v.

CASE NO. 3:06-CV-00092 GTE

**GARY MEADOWS
CONSTRUCTION CO., INC.**

DEFENDANT

ORDER

Presently before the Court is Plaintiff Building Construction Enterprises, Inc.'s ("BCE") Motion to Extend Time for Discovery, Motions, and Status Report.

Currently, this case is set for trial on September 17, 2007. The discovery cutoff is May 5, 2007, the motions cutoff is May 18, 2007, and the status report is due May 18, 2007. Plaintiff requests that the Court extend these deadlines until July 31, 2007. Plaintiff states that no discovery has been conducted because Plaintiff erroneously awaited what it believed would be a transfer to another Court. The Court notes that it denied Plaintiff's Motion for Reconsideration of the Order granting Defendant's Motion for Voluntary Dismissal of Third Party Defendant Safeco and denying transfer of this case on April 4, 2007.

Defendant objects stating that Plaintiff failed to file its Initial Disclosures as required by Rule 26 and the Rule 26(f) report. Defendant notes that while the mandatory disclosures were due September 29, 2006, Defendant only received Plaintiff's initial mandatory disclosures on May 4, 2007. Defendant argues that because Plaintiff failed, without any substantial justification, to disclose information required by Rule 26(a) within the proper time, Plaintiff should not be allowed to extend

time for discovery and should be prevented from using as evidence any witness or information that, without substantial justification, has not been disclosed as required by Rule 26(a). *See* Fed. R. Civ. P. 37(c)(1) (“A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion or after affording an opportunity to be heard, may impose other appropriate sanctions.”). Defendant states that to allow belated discovery of Defendant would result in unnecessary expenditure of time, expenses and attorney’s fees.

There is considerable merit to Defendant’s objection. Nevertheless, the Court will allow an extension of the deadlines. The discovery cutoff is extended to July 2, 2007, the motions cutoff is extended to July 23, 2007, and the status report is due July 23, 2007.

Accordingly,

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Extend Time (Dkt. #39) be, and it is hereby, GRANTED. The discovery cutoff is extended to July 2, 2007, the motions cutoff is extended to July 23, 2007, and the status report is due July 23, 2007.

Dated this 15th day of May, 2007.

/s/Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE